**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH**

**AT HYDERABAD**

## HON'BLE Mr. JUSTICE R. SUBHASH REDDY

**Writ Petition No.13692 of 2007**

**Dated: August 7, 2007**

**Between:**

A. Sudhakar Reddy, S/o. A. Narayana Reddy,
Aged about 39 years, Occ: Engineer & Special-
Class Civil Contractor, R/o.H.No.2-2-1075/A/3,
Bagh Amberpet, Hyderabad – 500 013.

… Petitioner

And

Moulana Azad National Urdu University,
Gachibowli, Hyderabad, rep. by its Registrar.

… Respondent

## Order:

In this writ petition, petitioner has questioned the communication dated 12-04-2007 issued by the respondent – Moulana Azad National Urdu University, Gachibowli, in proceedings No.MANUU/CD/F.105/2007/618.

2. Heard learned counsel for the petitioner and learned Standing Counsel appearing on behalf of the respondent.

3. Respondent herein, i.e. Moulana Azad National Urdu University, called for tenders for execution of certain civil works and the last date of submitting tenders was 24-03-2005. It is stated that petitioner submitted his tender on 24-03-2005, became successful bidder and was awarded contract, the value of which is Rs.4.92 crores.

4. The A.P. State Legislature repealed Andhra Pradesh General Sales Tax Act (for short 'The APGST Act') and introduced Andhra Pradesh Value Added Tax Act, 2005 (for short 'The VAT Act'). As per the APGST Act, 8% tax on the entire material component was being levied, whereas per the VAT Act, 4% tax is to be levied on the total value of the contract irrespective of the material component.

5. By the impugned letter the claim of the petitioner for reimbursement of differential amount on account of imposition of Value Added Tax under the VAT Act in the place of the tax under the APGST Act was rejected. The VAT Act came into force with effect from 01-04-2005. As per the provisions of the VAT Act, deduction towards Value Added Tax was being made at 4% of the value of the work done and the amount thus deducted from the bills of the petitioner was being transmitted to the Andhra Pradesh Commercial Taxes Department. For the period from 23-03-2006 to 15-05-2007, an amount of Rs.22,75,852/- was deducted towards Value Added Tax and remitted to the Commercial Taxes Department.

6. In the standard form of tender conditions, there is a considerable difference in the tax pattern in the magnitude of tax in comparison with APGST and VAT. The last date for receipt of tenders was 24-03-2005. The respondent was following the standard tender conditions. Clause 38 (i) of CPWD reads as follows:

> " All tendered rates shall be inclusive of all taxes and levies payable under respective statutes. However, pursuant

> to the Constitution (46th Amendment) Act, 1982, if any further tax or levy is imposed by Statute, after the last stipulated date for the receipt of tender including extensions if any and the contractor thereupon necessarily and properly pays such taxes/levies, the contractor shall be reimbursed the amount so paid, provided such payments, if any, is not, in the opinion of the Superintending Engineer (whose decision shall be final and binding on the contractor) attributable to delay in execution of work within the control of the contractor."

7. The case of the petitioner is that the VAT Act was not in existence at the time of submission of tenders; hence, the aforesaid Clause of the contract is liable to be invoked and as per the aforesaid clause, he is entitled for reimbursement of differential tax between VAT Act and the APGST Act. In this regard, he submitted representation dated
02-05-2006 based on the aforesaid clause. The said representation was rejected by the respondent by the impugned letter by recording a finding that deduction of Value Added Tax from the Running Bill is in order.

8. The grievance of the petitioner is that his representation has not been considered in proper perspective.

9. Learned counsel for the petitioner submits that as much as the last date of submission of tenders was 24-03-2005 and the VAT Act came into force with effect from 01-04-2005, in the light of the condition under Clause 38 of CPWD standard form, petitioner is entitled for reimbursement of differential tax between VAT Act and APGST Act.

10. Respondent has filed counter affidavit, disputing the claim of the petitioner. Learned Standing Counsel appearing for the respondent submits that petitioner is not entitled for any reimbursement.

11. The condition under Clause 38 is general in nature, and there is

also specific agreement entered into by the petitioner

12-05-2005. Clause 14 of the agreed terms reds as follows:

> " Sales tax, purchase tax, turn-over tax or any other tax on material in respect of this contract shall be payable by the contractor and the Registrar will not entertain any claim whatsoever in respect of the same."

12. In the light of the aforesaid clause, it is submitted by the learned Standing Counsel for the respondent that petitioner is not eligible for any reimbursement and it is his liability to pay entire Value Added Tax as per the VAT Act.

13. However, it is to be noticed that the representation of the petitioner dated 02-05-2006 has not been considered either with reference to Clause 38 of CPWD or with reference to Clause 14 of the terms of the contract entered into by the petitioner. The said representation was rejected merely stating that the deduction of Value Added Tax at 4% from the contractor's running bill is in order. But, the actual question that requires to be considered is whether the petitioner is entitled for reimbursement of the difference in the tax on account of coming into force of the VAT Act, as, on the last date of submission of tenders, 8% tax on the entire material was payable, whereas with effect from 01-04-2005, 4% tax is payable under the VAT Act, on the total value of the contract. Under the APGST Act, sales tax was notified under the slab, whereas under the VAT Act, it was 4% on the material. As much as the said aspect is not at all considered by the respondent, and the representation of the petitioner is rejected by the impugned letter merely on the ground that the deduction of Value Added Tax of 4% is in order, I set aside the letter dated 12-04-2007 and direct the respondent to consider the representation of the petitioner afresh in the light of the conditions of CPWD and also Clause 14 of the terms of the agreement entered into by the petitioner.

It is open to the petitioner to make additional representation, if any, within a period of three weeks from the date of receipt of this order. On petitioner filing such representation, and even in the absence of such representation, respondent shall consider the matter afresh, pass appropriate orders and communicate the same to the petitioner.

14. The writ petition is allowed to the extent indicated above. No order as to costs.

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**JUSTICE R. SUBHASH REDDY.**

August 7, 2007
**MRR**